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10                   UNITED STATES DISTRICT COURT  
11                   WESTERN DISTRICT OF WASHINGTON  
12                   AT TACOMA

13                   UNITED STATES OF AMERICA,

14                   Plaintiff,

15                   v.

16                   ARTHUR MALONE BOYD,

17                   Defendant.

18                   NO. CR97-5259JET

19                   ORDER

20                   THIS MATTER comes on before the above-entitled Court upon Defendant's Motion for  
21                   Modification of Sentence under 18 U.S.C. §3582(c)(2).

22                   Having considered the entirety of the records and file herein, the Court finds and rules as  
23 follows:

24                   Defendant seeks a reduction of his sentence, claiming that all guidelines sentencing ranges  
25 were subsequently lowered per United States v. Booker, 125 S.Ct. 738 (Jan 12, 2005) once the  
26 Supreme Court made the sentencing guidelines effectively advisory. Defendant's argument lacks

1 merit. No guideline sentencing range applicable to Boyd has been lowered by the Sentencing  
2 Commission as required by §3582(c). Therefore, Defendant may not seek reduction under  
3 §3582(c)(2). Nor is Booker applicable in this case. The Defendant's sentence became final prior to  
4 the decision in Booker. The United States Supreme Court has not made Booker retroactive to cases  
5 on collateral review. See In re Anderson, 396 F.3d 1336, 1339-40 (11<sup>th</sup> Cir. 2005), citing ; Tyler v.  
6 Cain, 533 U.S. 656, 121 S.Ct. 2478 (2001); Guzman v. United States, 2005 WL 80324 (2d Cir.  
7 (N.Y.). A motion pursuant to 28 U.S.C. §2255 is the proper vehicle to raise Defendant's claim, and  
8 this Court construes Defendant's motion as such. However, Defendant has previously filed a §2255  
9 motion, which was denied. The Ninth Circuit Court of Appeals subsequently denied a motion for  
10 certificate of appealability. Defendant's motion constitutes a second or successive 2255 motion.  
11 Defendant has not obtained prior authorization from the Ninth Circuit Court of Appeals for filing a  
12 second or successive §2255 motion. Accordingly, Defendant's motion is DISMISSED for want of  
13 jurisdiction.

In order for an appeal to proceed, this Court must issue a Certificate of Appealability. See 28 U.S.C. §2253; United States v. Asrar, 108 F.3d 217 (9<sup>th</sup> Cir. 1997). This court declines to issue a Certificate of Appealability because Defendant Boyd has failed to make “a substantial showing of the denial of a constitutional right.” 28 U.S.C. 2253(c)(2).

18 IT IS SO ORDERED.

19 The clerk of the court is instructed to send uncertified copies of this Order to all counsel of  
20 record.

DATED this 21<sup>st</sup> day of September, 2005.

23 || /s JACK E. TANNER

JACK E. TANNER

**JACK E. TANNER  
SR. UNITED STATES DISTRICT JUDGE**

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